

RESOLUTION NO. 32700

A RESOLUTION AUTHORIZING THE ADMINISTRATOR FOR THE DEPARTMENT OF PUBLIC WORKS TO EXECUTE A MEMORANDUM OF AGREEMENT BETWEEN THE CITY OF CHATTANOOGA, NORFOLK SOUTHERN RAILWAY COMPANY, CHATTANOOGA MF JOINT VENTURE, LLC, AND CHATTANOOGA 706 LAND CO. LLC REGARDING THE CLOSURE OF TWO PRIVATE AT-GRADE CROSSINGS (73467W AND 736945H) AND THE INSTALLATION OF TWO PUBLIC AT-GRADE CROSSINGS (946998L AND 947002G) FOR THE CONSTRUCTION OF TWO RESIDENTIAL AND MIXED-USE COMMUNITIES AT 702, 706, AND 710 MANUFACTURERS ROAD IN ORDER TO PROVIDE FULL PUBLIC ACCESS TO SUCH COMMUNITIES TO AND FROM THE MANUFACTURERS ROAD AND PAPERMILL ROAD PUBLIC RIGHT-OF-WAYS.

BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF CHATTANOOGA, TENNESSEE, That it is hereby authorizing the Administrator for the Department of Public Works to execute a Memorandum of Agreement between the City of Chattanooga, Norfolk Southern Railway Company, Chattanooga MF Joint Venture, LLC, and Chattanooga 706 Land Co. LLC regarding the closure of two private at-grade crossings (73467W and 736945H) and the installation of two public at-grade crossings (946998L and 947002G) for the construction of two residential and mixed-use communities at 702, 706, and 710 Manufacturers Road in order to provide full public access to such communities to and from the Manufacturers Road and Papermill Road public right-of-ways.

ADOPTED: November 4, 2025

/mem

MEMORANDUM OF AGREEMENT
between
NORFOLK SOUTHERN RAILWAY COMPANY
and
CITY OF CHATTANOOGA
and
CHATTANOOGA MF JOINT VENTURE, LLC
and
CHATTANOOGA 706 LAND CO, LLC

This Memorandum of Understanding (hereinafter referred to as “MOU”) is made this _____ day of _____, 2025 between NORFOLK SOUTHERN RAILWAY COMPANY and its operating subsidiaries (collectively, “Railway”) and CITY OF CHATTANOOGA (“City”) and CHATTANOOGA MF JOINT VENTURE, LLC and CHATTANOOGA 706 LAND CO, LLC (together, “Developer”).

I. Purpose of MOU

Railway has a critical interest in maintaining the capacity of its rail network in Tennessee so it can efficiently serve customers and effectively manage its network operation. Railway owns certain real property located within Chattanooga, Tennessee that contains existing mainline railroad tracks and sidings that are a part of Railway’s Chicago Line. Developer is constructing two (2) residential and mixed-use communities on approximately 18.33 acres total located along Manufacturers Road in Chattanooga, Tennessee. This project involves (A) the closure of two (2) private at-grade crossings 73647W and 736945H, and (B) the installation of two (2) public at-grade crossings by the City of Chattanooga in the same or similar locations as 946998L and 947002G, as depicted on Exhibit A hereto.

The parties intend to negotiate formal written agreements among the parties or their appropriate affiliates or partners that would govern the various aspects of the proposal as more particularly set forth herein (“Definitive Agreements”). Binding obligations with respect to the proposal shall only arise upon the execution of the Definitive Agreements by all parties. The terms of this MOU are based upon information currently available and do not reflect all material terms of the proposed transaction but provide a basis for negotiating the Definitive Agreements. The Definitive Agreements would contain such covenants, conditions, indemnities, representations, and warranties as are customary for the type of transaction and as the parties would mutually agree, unless specified herein as required inclusions.

II. Obligations of the Parties

A. Crossing Closure Agreements

The Developer agrees to enter into one or more voluntary crossing closure agreement(s) (“Closure Agreements”) with Railway or to cause any other necessary party to enter into such Closure Agreements as appropriate, substantially in the form of the agreement included in Exhibit B hereto. Under the Closure Agreements, the parties agree to voluntarily close 73647W, and 736945H Crossings, including forgoing any previously existing statutory or deeded right to such crossings.

B. Public Crossing Installations

The City represents and agrees that it has or will obtain any property rights that are necessary to develop public at-grade crossings at 946998L and 947002G Crossings. The City agrees to take any required actions to establish 946998L and 947002G Crossings as public crossings. Such actions may include, without limitation, passing a resolution or ordinance as needed pursuant to the State’s or City’s governing statutes,

rules, or ordinances to allow such closure and providing reasonable assistance to Railway as needed in connection with discussions with the Tennessee Department of Transportation (Tennessee DOT) and/or other governmental and regulatory authorities that may have jurisdiction over the New 946998L and 947002G Crossings, at no cost to Railway other than as set forth in this MOU. The City agrees to follow Railway's established Public Projects process to seek approval from Railway regarding the engineering designs for the new public 946998L and 947002G Crossings, including any pavement markings, signs or other motorist and pedestrian advanced notifications recommended by TDOT. This process includes entering into a preliminary engineering reimbursement agreement between Railway and either the Developer or the City, and execution of a construction agreement between Railway and the City.

C. Future Need for Automatic Warning Devices ("AWD")

If Railway provides notice of its intent to increase rail operations over the line (including but not limited to those cases in which the same has been required by the STB or a court), then, at the election of Railway, City shall promptly and within thirty (30) days engage the Tennessee Department of Transportation (TDOT) to perform a full diagnostic review for the 946998L and 947002G Crossings to determine if and what active warning devices are required. The City agrees that Railway may require that some or all of the noted work be performed by Railway and/or a Railway contractor. Railway reserves the right at any time to require that any of the work covered by this MOU be performed by Railway employees under labor agreements between Railway and its employees; Railway reserves the right at any time to require that any flagging work contemplated by this MOU be performed by Railway employees or by contractors directly retained by City. Under all alternatives, the work shall all be at the expense of City, and City shall reimburse any Railway costs within six (6) months of receiving any billing from Railway. Railway shall provide a detailed cost estimate to each party prior to commencement of the work

D. Landscaping

Should City or Developer seek to enter Railway property to perform landscaping work on Railway right of way, City or Developer will submit a request for a non-environmental right of entry using the online portal available through Railway's public website, which requires submission of a scope of work and other pertinent information to Railway's vendor that coordinates and processes applications for such access ("Access Vendor"). As of the effective date of this MOU, the Access Vendor is RailPros and the Access Vendor's portal is available at <https://ns.railprospermitting.com>. Railway may change the Access Vendor and portal from time to time at Railway's sole discretion, and such changes will be posted on Railway's website. Railway reserves the right to advise City or Developer that such request is outside the scope of the non-environmental right of entry process and subject to further review. Should City or Developer seek to enter Railway property to perform ongoing maintenance to the landscaping work, City or Developer may apply for a land lease at the link provided herein. Prior to entering Railway property or the 946998L and 947002G Crossings, City or its contractor or Developer must execute a right of entry agreement ("ROE Agreement") as coordinated by the Access Vendor.

III. Representations and Warranties

Each party to this MOU represents and warrants to the other party that:

1. It has full power, authority, and legal right to execute and perform this MOU;
2. It has taken all necessary legal, governmental, and corporate action to authorize the execution and performance of this MOU;
3. it shall act in good faith to give effect to the intent of this MOU and to take such other action as may be necessary or convenient to consummate the purpose and subject matter of this MOU.

IV. No Waiver of Federal Laws

Certain state and local approvals and conflicting requirements are preempted as applied to rail facilities operating in interstate commerce under the Interstate Commerce Commission Termination Act of 1995 (ICCTA), 49 U.S.C. §10501, and Federal Railway Safety Act of 1970 (FRSA), 49 U.S.C. § 20101. Railway does not waive and expressly preserves any claims or defenses related to such ICCTA or FRSA preemption related to any aspect of this MOU, or any other activities Railway undertakes in the City.

V. Termination

Either party may terminate its performance of related obligations under this MOU if the other party fails to rectify a material breach under a portion of this MOU within thirty (30) days of receipt by the breaching party of written notice of such breach from the non-breaching party. In such case, the non-breaching party shall be entitled, without further notice, to cancel that party's involvement pursuant to the MOU, without prejudice to any claim for damages, breach of contract or otherwise. The parties agree that the failure or termination of any portion or relevant provision of this MOU will not be a basis for terminating other severable obligations or provisions of this MOU, unless the failure or breach is such that the entire MOU loses substantially all of its value to the non-breaching party. This MOU shall terminate upon execution of all Definitive Agreements contemplated herein.

VI. Notice

Any notice or communication required or permitted under this MOU shall be sufficiently given if delivered in person, by certified mail, return receipt requested, or via email to the addresses listed below or to such other address as one party may have furnished to the other in writing. The notice shall be deemed received when delivered or signed for, or on the fifth day after mailing if not signed for.

If to Railway:

Norfolk Southern Railway Company
TITLE
650 W. Peachtree St. NW
Atlanta, GA 30308
[PHONE]
[EMAIL]

If to City:

Chattanooga Public Works, Transportation
Design and Engineering
Chattanooga Land Development Office
1250 Market Street, Suite 3030
Chattanooga, TN 37402
ATTN: Greg Herold / Bill Payne / Phil Noblett
423-643-5950
Email: gherold@chattanooga.gov /
bpayne@chattanooga.gov /
pnoblett@chattanooga.gov

If to Developer:

Chattanooga MF Joint Venture, LLC
Chattanooga 706 Land Co, LLC
889 Howell Mill Rd NW, Suite 3300
Atlanta, GA 30318
Attn: Matt Mason / Mack Reese / Frank
Reese
Phone: (768) 778-6288 / (770) 310-3414 /
(404) 550-4922
Email: mmason@gatewayventuresre.com
/ mreese@gatewayventuresre.com /
freese@atlantic-cos.com

VII. Entire Agreement

This MOU contains the entire agreement of the parties regarding the subject matter of this MOU and there are no other promises or conditions in any other agreement whether oral or written. This MOU supersedes any prior written or oral agreements between the parties. Notwithstanding the foregoing, the parties contemplate entering into other agreements as set forth in this MOU to implement the purpose of this MOU.

VIII. Severability

If any provision of this MOU shall be held to be invalid or unenforceable for any reason, the remaining provisions shall continue to be valid and enforceable. If a court finds that any provision of this MOU is invalid or unenforceable, but that by limiting such provision it would be come valid and enforceable, then such provision shall be deemed to be written, construed, and enforced as so limited.

IX. Counterparts

This MOU may be executed through the use of separate signature pages or in any number of counterparts and each of such counterparts shall, for all purposes, constitute one agreement binding on all the parties, notwithstanding that all parties are not signatories to the same counterpart. Counterpart signature pages may be affixed to a true copy of this MOU. The parties agree that a signature transmitted by facsimile or similar electronic transmission may be deemed an original signature.

[Remainder of page intentionally blank]

IN WITNESS WHEREOF, this Agreement has been executed the parties hereto as of the date first written above.

CHATTANOOGA MF JOINT VENTURE, LLC,
a Delaware limited liability company

By: _____

Name: _____

Title: _____

STATE OF _____)

COUNTY OF _____)

Before me, a Notary Public of the aforementioned State and County, personally appeared _____, to me known (or proved by sufficient evidence) to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed and for the purposes therein contained.

WITNESS my hand and seal this _____ day of _____, 2025.

Notary Public at Large

My commission expires: _____

CHATTANOOGA 706 LAND CO, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

STATE OF _____)
COUNTY OF _____)

Before me, a Notary Public of the aforementioned State and County, personally appeared _____, to me known (or proved by sufficient evidence) to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed and for the purposes therein contained.

WITNESS my hand and seal this _____ day of _____, 2025.

Notary Public at Large

My commission expires: _____

NORFOLK SOUTHERN RAILWAY COMPANY

By: _____

Name: Aaron Meyer

Title: System Engineer Public Projects

STATE OF _____)

COUNTY OF _____)

Before me, a Notary Public of the aforementioned State and County, personally appeared Aaron Meyer, to me known (or proved by sufficient evidence) to be the person described in and who executed the foregoing instrument and acknowledged that he executed the same as his free act and deed and for the purposes therein contained.

WITNESS my hand and seal this _____ day of _____, 2025.

Notary Public at Large

My commission expires: _____

CITY OF CHATTANOOGA, TENNESSEE

By: _____

Printed Name: Jerramy L. Wood

Title: Administrator of Public Works

STATE OF TENNESSEE)

COUNTY OF HAMILTON)

Before me, a notary public of the state and county aforesaid, personally appeared Jerramy L. Wood, of whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who upon oath acknowledged himself to be the Administrator of Public Works of the City of Chattanooga, the within named bargainor, a Tennessee municipal corporation, and that he as such Administrator of Public Works, executed the foregoing for purposes contained therein, by signing the name of Jerramy L. Wood by himself as Administrator of Public Works.

WITNESS my hand and seal this _____ day of _____, 2025.

Notary Public at Large

My commission expires: _____